

Note: A *Word 2013* version of this document is available at this [link](#). Please refer to the *Word* version to make modifications to the sample forms and vouchers.

Contract Defender Program Rules and Commentary

This document contains the Contract Defender Program Rules adopted by the Task Force on Indigent Defense and ratified by the Texas Judicial Council. The rules became effective on January 1, 2007. The Task Force’s successor agency, the Texas Indigent Defense Commission republished and readopted the contract defender rules without amendment in 2012 and they again became effective on January 11, 2013. This document also contains commentary to the rules that was developed with the assistance of an interdisciplinary workgroup of stakeholders. Commentary specific to a particular rule appears immediately below that rule, and general commentary appears at the end of the document.

The commentary was developed both to provide guidance on the rules and also to highlight for consideration policy areas that, while important, were not made mandatory by inclusion in the rules. The commentary is provided to assist counties in implementing quality indigent defense contract defender programs. In many cases, the commentary is based on model guidelines for providing quality indigent defense services. In those situations, the source document is cited for reference purposes. National guidelines referenced include “Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services” from the National Legal Aid and Defender Association (NLADA guidelines), the American Bar Association’s “Standards for Criminal Justice: Providing Defense Services” (ABA standards), and the “Compendium of Standards for Indigent Defense Systems” published by the Institute for Law and Justice. The “Compendium” was funded by a grant from the Bureau of Justice Assistance as a collection of standards from a variety of sources arranged by subject. A listing of these and other reference documents is included at the end of this document.

TITLE 1. ADMINISTRATION

Part 8. TEXAS JUDICIAL COUNCIL

Chapter 174. INDIGENT DEFENSE POLICIES AND STANDARDS

Subchapter B. CONTRACT DEFENDER PROGRAM REQUIREMENTS

1 TAC §§174.10 - 174.25

Part I. DEFINITIONS

§174.10. Subchapter Definitions.

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

- (a) **Appointing Authority.** The appointing authority is the:

- (1) Judge or judges who have authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure; and/or
 - (2) Juvenile board that has authority to establish an indigent defense plan and approve attorneys to represent indigent respondents in juvenile cases under Section 51.102, Family Code.
- (b) **Contract Defender Program.** Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- (c) **Contracting Authority.** The contracting authority is the county or counties that have the authority to conclude a contract and to obligate funds for the provision of indigent defense services.
- (d) **Contractor.** The contractor is an attorney, law firm, professional association, lawyer's association, law school, bar association, non-profit organization or other entity that can be bound by contract.
- (e) **Itemized Fee Voucher.** An itemized fee voucher is any instrument, such as an invoice, that details services provided by a contractor providing indigent defense services. The itemized fee voucher may be in paper or electronic form. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by Section 71.0351, Government Code.

Commentary on Itemized Fee Voucher/Indigent Defense Expenditure Report

The information necessary for the county auditor or other designated official to complete the indigent defense expenditure report required to be submitted to the Office of Court Administration by Section 71.0351, Government Code currently includes the amount paid, cases disposed associated with the amount paid, the court in which the cases were disposed, and case type. Case types include misdemeanor, felony, juvenile, appeal-felony, appeal-misdemeanor, appeal-juvenile, no charges filed-adult, and no charges filed-juvenile.

Although the model attorney fee voucher promulgated by the then Task Force is well suited to standard assigned counsel cases, a different voucher form is needed for Contract Defender Programs. Attached to this document are four sample vouchers for use with Contract Defender Programs. The first two allow the Contractor to report the minimum required information on each of the cases disposed of during the payment period. If the contract covers only one court then the jurisdiction can use the first sample form that includes the court description at the top. If the contract covers multiple courts then the jurisdiction will want to include the court description for each case, as provided on the second sample form.

In addition to the required elements included on the first two sample voucher forms, some jurisdictions may want to track case types at a more detailed level, including, for example, identifying payments allocable to revocation proceedings in felony or misdemeanor cases. The

Appointing Authority also may want to consider adding evaluative elements to the voucher, such as information on how the case was handled and decided, in order to assist the judges or juvenile board in tracking the performance of the Contractor. Examples of data elements that may be useful in this process include:

- *Jury Trial*
- *Bench Trial*
- *Plea Bargain*
- *Open Plea*
- *Conviction*
- *Dismissed/Non-Suit*
- *Acquittal*
- *Time from appointment to disposition*

While the sample fee vouchers will allow the auditor to accurately capture the number of cases disposed by court and case level, the auditor also must report expenditures by court and case level. If a contract covers multiple courts, the auditor will need some way to allocate the expenditures under the contract to each court and case level. In this situation, we recommend the auditor contact Texas Indigent Defense Commission Force staff to develop a mechanism to apportion the funds for the expenditure report.

PART II: APPLICATION OF STANDARDS AND CONTRACTING PROCEDURES

§174.11. Application of Subchapter. This Subchapter applies to all contract defender programs. This Subchapter does not apply to public defender programs established and governed by Chapter 26, Code of Criminal Procedure.

§174.12. Application Process. The appointing authority shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

- (a) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
- (b) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract.
- (c) Application. All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records- Local Schedule GR.

Commentary on Solicitation Methodology

The Appointing Authority (judge and/or juvenile board), working with the Contracting Authority (county officials), may use a variety of methods to procure attorneys to contract with the county to provide indigent defense services. The Appointing Authority may act on its own

to publicize the availability of a contract and solicit applications or it may work directly with the Contracting Authority. Alternatively, one of the methods described in the Professional Services Procurement Act (Chapter 2254, Government Code) could form the basis for the solicitation process. However, any method selected in the jurisdiction must comply with the open bidding provision contained in § 174.12.

§174.13. Application Review Process. Following the review of all applications the appointing authority shall by a majority vote select contractor(s), specify the types of cases each contractor is qualified to handle, and authorize the contracting authority to enter into a contract. The attorneys associated with the selected contractor(s) must meet the attorney qualification requirements contained in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the attorneys associated with the selected contractor(s) must also meet the attorney qualifications set by the regional selection committee and be approved by the regional selection committee to represent clients in capital cases. The appointing authority shall consider at least the following factors when evaluating applications:

- (a) Experience and qualifications of the applicant;
- (b) Applicant's past performance in representing defendants in criminal cases;
- (c) Applicant's disciplinary history with the state bar;
- (d) Applicant's ability to comply with the terms of the contract; and
- (e) Cost of the services under the contract.

Commentary on Advisory Board

The ABA standards and NLADA guidelines strongly support a system designed to guarantee the integrity of the relationship between lawyer and client. The standards and guidelines state that the attorneys serving under a contract should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The ABA and NLADA both recommend the use of an advisory board as an effective way to maintain the professional independence of the indigent defense service provider, including a Contractor. Therefore, the Appointing Authority may wish to form an advisory board to assist in the contracting process and/or oversight of the Contractor. Similar types of boards have been formed to oversee each of the public defender offices created since passage of the Fair Defense Act. The advisory board may include the following features:

- (a) *Membership. The advisory board should not include prosecutors or law enforcement officials, but may consist of members:*
 - 1) who will ensure the independence of Contractor;*
 - 2) who represent a diversity of factions in order to insure insulation from partisan politics;*
 - 3) who are county officials (e.g. purchasing agent or auditor);*
 - 4) who are practicing attorneys who do not have a potential conflict of interest (e.g. a criminal defense attorney selected by the president of the county bar association or county criminal defense lawyers association); and*
 - 5) who represent organizations serving the poor or client community.*
- (b) *Purpose. The advisory board may:*

- 1) *advise the Appointing Authority about, and approve, the terms and minimum requirements of any contract for defense services;*
- 2) *advise the Appointing Authority on fee schedules, rates of reimbursement, prevailing attorneys fees, appropriate caseload standards, and other issues related to the cost of indigent defense services; and*
- 3) *Review Contractors and advise the Appointing Authority on the selection of Contractors.*

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standards 5-1.3 and 5-3.2(b), Washington, DC; and the National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Part II, Washington, DC.

§174.14. Awarding the Contract. In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority may approve the recommended contractor(s) and enter into a contract for services. The contracting authority shall enter into a contract only if it complies with these standards and all applicable law governing professional services contracts entered into by counties. A contract shall not be awarded solely on the basis of cost.

Commentary on Awarding the Contract

The Contracting Authority should select the proposal(s) that demonstrate(s) the best overall value to the courts and county. All national standards require that a contract not be awarded based primarily on cost. The advisory board or Appointing Authority should determine whether the contract amount will provide a potential Contractor the capability to comply with the terms of the contract and these rules, and with the resources necessary to provide effective representation. To facilitate this analysis, the solicitation should require potential Contractors to submit a proposed budget for the delivery of services under the contract.

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline IV-3, Washington, DC.

PART III: REQUIRED ELEMENTS OF A CONTRACT FOR INDIGENT DEFENSE SERVICES

Each component below shall be included in a contract for indigent defense services and shall serve as the basis for the NOA.

§174.15. Parties. Identify the appointing authority, contracting authority, and contractor.

§174.16. Term of Contract. The contract shall specify the term of the contract, including any provision for extensions, and a provision for terminating the contract by either party.

Commentary on Term and Termination of Contract

All standards recommend a minimum contract term in order to safeguard the independence of the Contractor. Most standards listed in the “Compendium of Standards for Indigent Defense Systems” require a two-year minimum term (NLADA guidelines, Arkansas, North Dakota), while Georgia sets a one-year minimum. Under Texas law, a county may only enter contracts

for one year. However, a contract could contain extension clauses to allow renewal for additional one year periods.

In addressing the provision for terminating the contract, commentary in the “Compendium of Standards for Indigent Defense Systems” indicates that contractors can be particularly vulnerable to political pressures. Conflict between aggressively defending the client and protecting the economic self-interest of the Contractor is a danger. However, provisions can be put into the contract to reduce these pressures. The most common solution to this potential problem is to include a contract provision allowing removal of the Contractor short of the agreed contract term for good cause only. The NLADA, Georgia, and Washington standards agree on requiring good cause for early termination of the contract, while North Dakota does not.

Examples of reasons for early termination could be that the Contractor fails to comply with the terms of the contract to an extent that the delivery of services to clients is impaired, or a willful disregard by the Contractor of the rights and best interests of clients. Other examples are if the Contractor engages in a crime or some other detrimental outside conduct, maintains an excessive caseload in its outside practice that is interfering with the Contractor’s effectiveness in meeting the terms of the contract, or misuses funds.

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-5, Washington, DC.

§174.17. Scope of Contract. The contract shall specify the categories of cases in which the contractor is to provide services.

§174.18. Minimum Attorney Qualifications. The contract shall specify minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the qualifications shall equal or exceed the minimum attorney qualifications set by the regional selection committee and the attorneys covered by the contract shall be required to be on the list of attorneys approved by the regional selection committee to represent clients in capital cases. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to meet and maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide defense services.

Commentary on Minimum Attorney Qualifications

To assist contract attorneys in continuing to meet minimum attorney qualifications, the contract could provide funds and sufficient staff time to permit systematic and comprehensive training for attorneys and professional staff. Where appropriate and where the size of the Contract Defender Program requires, all attorneys should be required to attend an intensive, entry-level training program. The contract could also establish specific subject matter criteria that any required training should cover.

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(xi), Washington, DC; and National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-17, Washington, DC.

§174.19. Duration of Representation. The contract shall specify that the contractor has the responsibility to complete all cases once representation is commenced during the term of the contract, unless an attorney covered by the contract is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure.

§174.20. Substitution of Attorneys. The contract shall identify the attorney(s) who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority. Nothing in the contract shall prohibit an attorney covered by the contract from being relieved or replaced in accordance with Article 26.04(j)(2) of the Code of Criminal Procedure.

§174.21. Caseload Limitations. The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

Commentary on Caseload/Workload Limitations

The maximum allowable caseload established in the contract should allow each lawyer to give every client the time and effort necessary to provide effective representation. Attorneys employed less than full time or handling a mix of cases should handle a proportional caseload. In determining an appropriate maximum number of cases, jurisdictions may wish to refer to the caseload standards developed by National Advisory Commission on Criminal Justice Standards and Goals in 1973. They recommend that the caseload of an attorney should not exceed the following:

- *Felonies per attorney per year: not more than 150;*
- *Misdemeanors (excluding traffic) per attorney per year: not more than 400;*
- *Juvenile court cases per attorney per year: not more than 200; and*
- *Appeals per attorney per year: not more than 25.*

For purposes of this standard, the term “case” means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding.

National standards recommend that the contract provide that the Contractor shall not be financially penalized for withdrawing from representation in a case if the Contractor is assigned more cases:

- a) than the maximum number specified in the contract;*
- b) than the Contractor and Contracting Authority reasonably anticipated at the time the contract was executed; or*
- c) requiring an extraordinary amount of time and preparation than the Contractor can competently handle even with payment of special case compensation (discussed below in §174.25).*

Source: National Advisory Commission on Criminal Justice Standards and Goals, 1973, *Report of the Task Force on the Courts*, Standard 13.12, Washington, DC and National Legal

Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-6 and III-12, Washington, DC.

§174.22. Standards of Representation. The contract shall require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct.

§174.23. Conflicts of Interest. The contract shall state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest.

Commentary on Conflicts of Interest

Contracts should not financially penalize the Contractor or individual attorneys for withdrawing from a case that poses a conflict of interest to the attorney. Another means of assigning and paying for representation will have to be provided for cases in which the Contractor cannot provide representation because of a conflict of interest.

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-13, Washington, DC; and American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(vii), Washington, DC.

§174.24. Investigators and Experts. The contract shall specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure.

Commentary on Investigators and Experts

The contract may provide that the Contractor access investigator and expert services through a request of the court on a case-by-case basis as provided in the local indigent defense plan and Article 26.05(d), Code of Criminal Procedure. Alternatively, the contract could include an amount of funds designated specifically for the hiring of investigators and/or mental health or other experts by the Contractor. Any designated funds could be used on a case-by-case basis by the Contractor or could be designated to hire an investigator on staff. The latter option may be especially appropriate when the number of cases is sufficiently large to justify a full- or part-time investigator. Due to the case-specific nature of most expert witnesses, staff experts probably do not make sense. However, funds could be budgeted in the contract for the Contractor to hire appropriate experts for specific cases. One advantage of this type of system is it streamlines the process for the courts and Contractor; the court is effectively approving expenses up-front without requiring the filing and ruling on frequent motions for investigators and experts that would otherwise be required. As it relates to investigators, the NLADA guidelines recommend that “no contract clause should interfere with the contracting attorneys’ selection, supervision, or direction of investigators.” The contract could include a provision requiring investigators to be licensed.

If the contract provides funds designated for investigators or experts, the contract should allow the attorney to request additional funds upon a showing of good cause. The NLADA guidelines also recommend that expenses for investigations, expert witnesses, transcripts and other necessary services for the defense should not decrease the Contractor's income or

compensation to attorneys or other personnel since to do so would set up a potential conflict of interest between the Contractor or its attorney and the clients. It is to avoid such a conflict that national standards recommend specially designating any contract funds payable for experts, investigators, etc., in order to separate them from funds payable for attorney services under the contract.

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-9 and III-13, Washington, DC.

§174.25. Compensation and Payment Processes. The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in Section 174.19.

Commentary on Compensation and Payment Processes

Article 26.05, Code of Criminal Procedure, provides a listing of the services that must be compensated and must be considered when setting the amount of compensation:

Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

The NLADA guidelines recommend that the compensation rate be set based on three factors:

- 1. the customary compensation in the community for similar services rendered by privately retained counsel to a paying client or government or other publicly-paid attorneys to a public client;*
- 2. the time and labor required to be spent by the attorney; and*
- 3. the degree of professional ability, skill and experience called for and exercised in the performance of the services.*

There are at least a couple of options in how the compensation can be structured:

- *Lump sum amount based on analysis of prior caseloads and expenditures paid on vouchers submitted by assigned counsel or contract attorneys*
- *Hourly billing*
- *Event based compensation (e.g. \$X for a sentencing hearing, \$X for drafting motions)*

The time period for payments also must be addressed in the contract. Time periods that could be considered would be weekly, monthly, or quarterly. High volume contracts where the Contractor is likely to be reporting a substantial number of cases on the fee voucher probably warrant shorter time periods for payment (see § 174.10 above).

An additional consideration referenced by the NLADA guidelines is “Special Case Compensation.” The NLADA guidelines recommend that the contract provide for reasonable compensation over and above the normal contract price for cases that require an extraordinary amount of time and preparation. Examples of these special cases could be cases involving competency, mental health issues, sex offenders, violent crimes, etc. The contract may specify which types of cases will require special fees. Alternatively, these types of cases could be assigned to outside counsel and not made part of the contract. The contract could specifically exclude certain types of cases from the scope of the contract or the court could merely assign them to outside counsel on a case-by-case basis.

Lastly, although § 174.19 provides that a case assigned during the term of the contract must be completed by the Contractor even after the contract term has expired, the contract may provide additional compensation to do so. Provisions for this could be included in the contract.

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-10 and III-11, Washington, DC.

Additional Commentary not Directly Associated with a Rule

Assignment of Cases to Contractor/Determination of Eligibility. *The contract may specify the process by which cases are assigned to the Contractor. The contract should specify the procedure by which a client’s financial eligibility is to be determined and the person, officer or agency responsible for making the determination initially and at subsequent review proceedings. This duty could be placed on the Contractor as part of the contract or it could be retained by the Appointing Authority. The contract should either incorporate eligibility standards by reference to those in accepted use in the jurisdiction or it should specify the eligibility standard applicable in all cases handled by the Contractor. If the Contractor will determine financial eligibility, the contract could provide for an automatic appeal to the court of any decision that a person requesting counsel is not eligible. The contract should also put the Contractor on notice that the information or statements of the defendant obtained in the eligibility screening process may be subject to public disclosure.*

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(iii) and 5-7.3, Washington, DC; and National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-3, Washington, DC.

Payments from Clients. *The Contractor should receive payments only from the Contracting Authority for legal services provided to a client assigned under the contract. The contract should specifically prohibit the Contractor from accepting any payments from a client or third party for legal services provided in a case assigned under the contract. Under Articles 26.05*

and 42.12, Code of Criminal Procedure, the court is granted authority to assess and collect reimbursement from defendants who can afford to repay at least a portion of the cost of the indigent defense services provided to them. Article 26.05 allows for reimbursement to be ordered upon conviction as a cost of court or, in certain circumstances, during the pendency of the charges. Article 42.12 allows assessment of court-appointed attorney costs as a condition of community supervision. In calculating the maximum amount to be assessed under either statutory provision, we recommend assessing the amount that would have been paid to an appointed attorney had the defendant not been represented by a contract defender. This is based on the law applicable to the analogous situation in which a defendant is represented by a public defender. Section 11, Article 42.12, Code of Criminal Procedure, provides in part that a defendant may be ordered to “[r]eimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender.”

Support Staff and Office Requirements. The contract may provide for an adequate number of support staff to ensure the provision of effective representation to clients and adequate assistance to attorneys. The contract also may require that specific staff and office requirements are met, including:

- a) an office with regular hours;
- b) secretaries;
- c) paralegals;
- d) telephone with answering service;
- e) library;
- f) accessible by public transportation;
- g) system of case management and reporting;
- h) social services personnel (e.g., caseworkers for mental health cases); and
- i) other resources.

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(x, xii), Washington, DC; and National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-8, Washington, DC.

Supervision and Evaluation. In contracts involving a large number of attorneys or cases, the contract could establish a procedure for internal systematic supervision and evaluation of the performance of the Contractor's staff. Supervision and evaluation efforts should include monitoring of time and caseload records, review and inspection of transcripts, an evaluation of attorney case activity, in-court observations, and periodic conferences. A system of performance evaluations should be based upon personal monitoring by the Contractor's director or chief attorney and should be augmented by regular, formalized comments by judges, prosecutors, other defense lawyers and clients. The criteria of performance employed should be those of a skilled and knowledgeable criminal lawyer.

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(xi), Washington, DC; and National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-16, Washington, DC.

Retention of Files and Records. *The contract may require the Contractor to retain all invoices under the contract for a set period of time, such as at least three years. The contract also may require the Contractor to retain client files for a specified period of time after the conclusion of the case, such as not less than twenty years or indefinitely. Client files should be retained in a manner that affords protection of the client's confidentiality interests.*

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-15 and III-21, Washington, DC.

Confidentiality. *The contract should prohibit the Contractor from releasing confidential attorney-client information or work product related to any case covered by the contract, except when authorized by the Texas Disciplinary Rules of Professional Conduct. However the contract could include a provision to require the Contractor to provide client information that does not identify the person, which is necessary for statistical purposes.*

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(xiii), Washington, DC; and National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-19, Washington, DC.

Management Information System. *The contract could require that the Contractor maintain a case reporting and management information system, data from which shall be available to, or provided to, the Contracting Authority and any advisory board. Any such system should be maintained independently from client files to protect confidential or privileged information. The case reporting and management information system could be used to provide the Contractor, the Contracting Authority and any advisory board with caseload information sufficient to assure compliance with the contract. This may be especially appropriate for contracts covering a large number of attorneys or cases.*

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-22, Washington, DC.

Insurance. *The contract may require that the Contractor provide malpractice insurance for attorneys representing clients under terms of the contract.*

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-20, Washington, DC.

Limits on Outside Practice of Law. *The contract could place limits on attorneys' practice of law outside of the contract. Any volume limitations set should be based on the caseload or workload the attorneys are expected to work under the contract and the maximum caseload or workload established in the contract pursuant to § 174.21. The contract also could limit the type of law and cases that attorneys could undertake outside of the contract.*

Source: American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.3(b)(viii).

Other Conflicts. *Contracts should not contain provisions that create conflicts of interests between the Contractor and defendants represented under the contract. National standards define conflicts of interest broadly to include situations beyond prior or concurrent representation of a co-defendant or witness. Specific contract provisions may create a conflict of interest between the Contractor and clients and, thus, those provisions should be avoided. Some of the specific provisions that may create a conflict are discussed elsewhere in the commentary, but others are not. Specifically:*

- a. *contracts should not financially penalize the Contractor or individual attorneys for withdrawing from a case that poses a conflict of interest to the attorney (see commentary to § 174.23);*
- b. *expenses for investigations, expert witnesses, transcripts and other necessary services for the defense should not decrease the Contractor's income for legal services under the contract or compensation to attorneys or other personnel (see commentary to § 174.24); and*
- c. *contracts should not, by their provisions or because of low fees or compensation to attorneys, induce an attorney to waive a client's rights for reasons not related to the client's best interest.*

Source: National Legal Aid & Defender Association, 1984, *Guidelines for Negotiating and Awarding Indigent Defense Contracts*, Guideline III-13, Washington, DC; and American Bar Association, 1990, *Standards for Criminal Justice Providing Defense Services*, Standard 5-3.2(c), 5-3.3(b)(vii)(x).

Current Resources Related to Contract Defender Systems:

- “Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services” - Adopted by National Legal Aid and Defender Association in 1984 and American Bar Association in 1985.
- “Contracting for Indigent Defense Services, A Special Report”- Bureau of Justice Assistance, 2000.
- “Standards for Criminal Justice: Providing Defense Services” - American Bar Association, 1990.
- “Compendium of Standards for Indigent Defense Systems” - Institute for Law and Justice funded by the Bureau of Justice Assistance, 2000.
- “Standards for the Provision of Legal Services to the Poor in Criminal Matters” - State Bar of Texas, 2001.
- “Report of the Task Force on the Courts” - National Advisory Commission on Criminal Justice Standards and Goals, 1973.

**Sample Attorney Fee Voucher for Contract System
Only One Court Covered by Contract**

Cases Disposed for the Month of _____ 2007

1. Contractor

2. Attorney Address (Include Law Firm Name if Applicable) 3. Telephone

4. County Vendor Number

5. Fax

6. Jurisdiction

☐ District

☐ County

☐ County Court at Law

Court # _____

Case Number

Last Name of Defendant or Reference
Number of Juvenile Respondent*

Case Level

Case Level – F= Adult Felony M= Adult Misdemeanor J= Juvenile FA= Felony Appeal
MA= Misdemeanor Appeal JA= Juvenile Appeal NCA= No Charges Filed Adult NCJ= No Charges Filed Juvenile

*Do not list names for juvenile court cases

Cases Disposed for the Month of _____ 2007

5. Fax

[illegible]

Cases Disposed for the Month of _____ 2007

1 Contractor

2. Attorney Address (Include Law Firm Name if Applicable) 3. Telephone

4. County Vendor Number

5. Fax

6. Jurisdiction

☐ District

☐ County

☐ County Court at Law

Court # _____

Case Number	Last Name of Defendant or Reference Number of Juvenile Respondent*	Case Level	Proceedings	Disposition
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Case Level – F= Adult Felony M= Adult Misdemeanor J= Juvenile FA= Felony Appeal
MA= Misdemeanor Appeal JA= Juvenile Appeal RF= Revocation Felony RM= Revocation Misdemeanor
NCA= No Charges Filed Adult NCJ= No Charges Filed Juvenile

Proceedings – TJ= Trial-Jury TC= Trial-Court PO= Plea Open PB= Plea Bargain O= Other

Disposition – C= Conviction A= Acquittal D= Dismissed/Non-suit

*Do not list names for juvenile court cases

